

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11037 of 2002

And

CIVIL APPLICATION No.2528 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HAMIRBHAI B. RATHOD

Appearance:

1. Special Civil Application No. 11037 of 2002
MR HARDIK C RAWAL for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1
MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/04/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner Corporation has challenged the award of the Labour Court, Palanpur

dated 18.3.2002. By the said award, the Labour Court has set aside the order of dismissal passed by the Corporation against the respondent workman and the concerned workman is ordered to be reinstated in service without benefit of any backwages for the intervening period. The respondent workman was serving as Conductor with the S.T.Corporation. It is alleged against him that on 22.5.1994 while he was on duty on the bus enroute to Varvala from Vanana, the respondent has not collected the fare from 10 passengers and accordingly, he has not issued the tickets to them. After holding the inquiry, the concerned workman was dismissed from service. The respondent, thereafter, raised the industrial dispute and the matter was referred for adjudication to the Labour Court, Palanpur and the reference was numbered as Reference (LCP) No.64 of 1999.

#. The Labour Court, after considering the evidence on record, came to the conclusion that in the instant case the respondent has not issued the tickets to 10 passengers and accordingly he was negligent in discharging his duties. The Labour Court has observed in para 6 of the award that the amount was recovered from the said defaulting 10 passengers by charging 10 times more than the actual fare. It is accordingly found that the concerned workman has not misappropriated any amount, in any manner, and, therefore, considering the said fact, the Labour Court interfered with the order of punishment while exercising the powers under Section 11-A of the Industrial Disputes Act and passed the order of reinstatement without benefit of any backwages for the intervening period.

#. On behalf of the Corporation, it is argued by Mr.Raval that, at least, the charge of negligence is proved against the respondent workman, and, therefore, this is not a case in which the concerned workman can be allowed to go scot-free without any penalty worth the name. He submitted that, reinstatement without any backwages itself cannot be said to be a penalty at all when the charge of negligence is proved against the respondent workman; at least, he should have been subjected to some penalty.

#. Mr.Rathod for the respondent has submitted that he has no objection if, over and above withholding of backwages for the intervening period, some penalty is inflicted on the workman.

#. It is, no doubt, true that the respondent workman has failed to discharge his duties as the Conductor in not

issuing the tickets, but, it is not in dispute that he has not misappropriated any amount at all and ultimately, the charge of negligence is proved against him that he has not issued the tickets to some passengers, and, ultimately, the said passengers have paid the amount 10 times more than what was required to be paid by them. Considering the said aspect of the matter, in my view, especially, when there is no charge of misappropriation of any amount, while confirming the order of reinstatement, the respondent workman also will be subjected to the penalty of withholding of four increments with future effect. This penalty is required to be inflicted in order to see that there may be some deterrent effect, because, it is the duty of the Conductor to issue the tickets and to collect the fare from such passengers for the benefit of his employer. In that view of the matter, the order of reinstatement without backwages cannot be said to be a penalty at all and some penalty was required to be inflicted even while exercising the powers under Section 11-A of the I.D.Act.

#. Considering the said aspect of the matter, and, since Mr.Rathod has fairly submitted that this Court can substitute the order of penalty instead of sending the same back to the Labour Court. The order of reinstatement without backwages is confirmed subject to the order of withholding of four increments with future effect. The Corporation is accordingly directed to reinstate the concerned workman on his original post without backwages for the intervening period and he will be subjected to withholding of four increments with future effect. If the respondent workman is not taken back in service, he shall be reinstated in service within one month from today, i.e. with effect from 1.5.2003, and from that date the respondent shall be entitled to the regular salary. Even, if there is a delay in giving appointment order, the Corporation is directed to pay him regular salary with effect from 1.5.2003. So far as the seniority of the said workman is concerned, he should be treated in continuous service. The petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

#. In view of the above order, Civil Application stands disposed of accordingly.

(P.B.Majmudar,J)
(pathan)